



Shilpa Agarwalla Vs. Naveen Tayal On 2 August 2017

Law Point:

To provide immediate relief to spouse unable to support or maintain himself/herself — Withholding of income — Adverse presumption — Wife ill and to take care of minor daughter — When petitioner-wife filed petition for maintenance, she was earning Rs. 40,000 p.m. as salary, which was more than respondent-husband — Petitioner-wife not proved that disparity of income between her and respondent-husband is so large as to enable this Court to say that wife is unable to maintain herself as per status of husband — As per medical certificate petitioner-wife suffering from sarcoidosis — She has to take care of minor child — Dismissal of this application shall not be construed to be a bar for petitioner to invoke Section 125, Cr.P.C. — Further observations made and directions issued.

Unlocking Ev.

By External Admin / Jul



JUDGEMENT

Heard Mr. G.N. Sahewalla, learned Senior Counsel, assisted by Ms. Bijita Sarma, learned Counsel appearing for the petitioner as well as Ms. P. Choudhury, learned Counsel appearing for the respondent.

2. By filing this application under Article 227 of the Constitution of India, the petitioner has challenged the order dated 17.8.2016 passed by the learned Principal Judge, Family Court, Guwahati in Misc. (J) Case No. 160/15 arising out of F.C. (Civil) Case No. 548/15, filed under Section 24 of the Hindu Marriage Act, 1955.

3. The case as revealed from the record is that the parties are estranged wife and husband. They were married on 29.1.2005. A daughter was born out of the marriage. On the allegation that the petitioner was compelled to live a miserable life, in the month of June, 2013, the petitioner had to leave her matrimonial home with her minor daughter. She had gone to Bangaluru and started to live there with her daughter. On receipt of notice in F.C. (Civil) Case No. 548/15, the petitioner entered appearance. By filing Misc. (J) Case 160/15 under Section 24 of the Hindu Marriage Act, 1955, the petitioner claimed maintenance for herself and her minor daughter.

4. Bereft of unnecessary details, by filing the said Misc. case, the petitioner alleged that the husband was not paying any maintenance to her as well as her minor daughter, who is reading in 3rd standard and is 9 years old, as such, she had taken shelter in a Non-Govt. Organization (NGO for short), named Art of Living and they were living on whatever basic amenities that was being provided by the said NGO. She claimed that her minor daughter was also studying in a school managed by the said NGO. She claimed that her parents came to Bangaluru from Tezpur to accompany her and her daughter to attend the Court proceeding at Guwahati. Claiming that the respondent had a flourishing chain of business, the petitioner claimed maintenance for herself and her daughter at the rate of Rs. 30,000 per month and a further sum of Rs. 40,000 as cost for her date-wise appearance. The respondent opposed the said application and claimed that the petitioner was a Graduate and an Interior Designer and she was doing various projects at Bangaluru and was having income of around Rs. 40,000 per month. The respondent denied the claim of the petitioner that he had various business. He projected that the petitioner could have lived in Tezpur or other smaller cities, but she was living in an expensive city like

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Petition Reply

By Shonee Kapoor / Jun

Bangaluru and the respondent expressed his inability to maintain her at Bangaluru. As per the petition, registered as I.A.(C) No. 289/17 filed herein, the respondent appears to be doing business in the name of M/s. Stylum and not various other firms as claimed by the petitioner.

5. By the order impugned herein, the learned Family Court arrived at a finding that the documents submitted by the petitioner revealed that while staying with NGO, she was receiving nominal money, but while working with an organization called 'Madhurya' since 2.1.2014 as a Interior Designer, she was having a salary of Rs. 40,000 per month. During the pendency of the proceeding, the petitioner made a request with her employer to relieve her and accordingly, she was relieved w.e.f. 16.6.2016 at her request. According to the petitioner, she was suffering from a rare disease—sarcoidosis, and she having received continuous treatment, the petitioner claimed to have been advised rest for 6 months. Thus, the learned Family Court arrived at a conclusion that while the earning of the respondent was Rs. 30,000 per month, the petitioner was earning Rs. 40,000 per month and, as such, held that the petitioner was not entitled to any maintenance. It is reiterated at the cost of repetition that unnecessary details have been truncated herein, being not relevant or the purpose of deciding the grievance raised herein.

6. The learned Senior Counsel for the petitioner has submitted that at the time when the impugned order was passed, there was no material before the learned Family Court that the petitioner was having any decent income to sustain herself or her minor daughter. It was submitted that she had resigned for her job and was living with NGO and that she and her daughter were being maintained by the NGO and the NGO was also taking care of the education of the minor daughter were itself sufficient for the learned Court below to award maintenance in favour of the petitioner and her minor daughter. It was submitted that the owing to the rare disease—sarcoidosis, the petitioner was advised to take complete rest and, as such, she was compelled to leave her job and, as such, this Court could take judicial notice of income from working as 'sevika' in 'Art of Living'. The learned Senior Counsel for the petitioner states that the petitioner is only seeking a decent maintenance and merely because she has chosen to live at Bangaluru was not a ground to refuse maintenance, because she is opting to live independently without becoming a burden for her parents. It is further submitted that education and well being of the minor daughter was also one of the liabilities of the respondent. The petitioner had duly mentioned in her application before the learned Family Court that her parents had come to Bangaluru from Tezpur and had provided tickets, and other cost for her appearance to defend the divorce proceeding at Guwahati. It is submitted that the respondent was quite capable of providing a reasonable maintenance of Rs. 30,000 per month for herself and her daughter and the petitioner must also bear the cost of travel and stay at Guwahati.

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7. Per contra, the learned Counsel for the respondent has objected to the prayers made by the petitioner. It is submitted that the petitioner had not disclosed her income with the NGO—Art of Living either before the learned Family Court and nor before this Court. It is submitted that it is a mere oral version of the petitioner's Senior Counsel that the petitioner was working as a 'sevika' with the Art of Living, without the petitioner having filed any document to substantiate the same. Moreover, the petitioner had suppressed the fact that she was working as an Interior Designer with an organization and that at the time when she had presented the petition for maintenance, she was drawing a salary of Rs. 40,000 per month, which was much more than the earning of the respondent. It was submitted that the petitioner cannot be granted maintenance on the basis of the income/earning of other members of the family, and further that when the respondent had proved his income to be about Rs. 30,000 per annum, the burden was shifted on the petitioner to disprove it. However, the learned Counsel for the respondent has stated that it was the specific stand of the respondent that he was ready to pay a reasonable maintenance for the minor child.

8. Having heard the learned Counsel for the parties, this Court has perused the materials on record. It is observed that the petitioner had claimed in Misc. (J) Case No. 160/15 that she had joined 'Art of Living' and was living her life with her daughter with the basic amenities provided by them. In the said petition, the petitioner did not disclose her earning. However, as per order dated 30.5.2016, passed by the learned Principal Judge, Family Court, Guwahati, in Misc. (J) Case No. 160/15, the petitioner herein had submitted her salary details. It was disclosed thereby that the petitioner was working as a Interior Designer with Madhurya w.e.f. 2.1.2014 and in the month of April, 2016, she was getting a net salary of Rs. 40,000 per month. Till that point, the said fact about her employment was not disclosed before the learned Court below. Moreover, even as on date, the

petitioner has not disclosed her income. In the opinion of this Court, as the petitioner was claiming maintenance and it had come out in course of trial that she was having a source of employment and, as such, the non-disclosure would lead to a presumption under Section 114 Illustration (g) of the Evidence Act, 1872 that if the document is produced, the same would not be favourable to the petitioner. Thus, this Court does not find any jurisdictional error by the learned Principal Judge, Family Court, Guwahati, to have refused maintenance to the petitioner.

9. The application for maintenance was filed under Section 24 of the Hindu Marriage Act, 1955. The said provisions read as follows:

“24. Maintenance pendente lite and expenses of proceedings—Where in any proceedings under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceedings, it may, on the application of the wife or the husband order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioners own income and the income of the respondent, it may seem to the Court to be reasonable:

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Provided that the application for payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of notice on the wife or the husband, as the case may be.”

10. The law, thus, is very clear. A plain reading of the section makes it amply clear that to claim the maintenance pendente lite under Section 24 of the Hindu Marriage Act, 1955, the spouse who moves the application must show that she or he has no sufficient income to maintain and support herself or himself. Obviously, the word “support” visualizes a situation where the spouse is entitled to enjoy the same status as that of the respondent spouse. Therefore, where there are great disparities in the income of the husband and the wife, the Court may bring about a balance between the two by awarding maintenance pendente lite to the spouse who is earning a lesser amount. However, in my humble opinion, this is not to be done on mathematical basis. The purpose is not that if the husband is earning Rs. 10,000 and the wife is earning Rs. 5,000 then both are to be brought to the level of Rs. 7,500. That is not the purpose of Section 24 of the Hindu Marriage Act, 1955. But, the purpose of Section 24 is to provide immediate relief to the spouse who is unable to support or maintain himself or herself.

11. In the present case, what has been proved on record is that on the date when the petitioner-wife had filed the petition for maintenance, she was earning Rs. 40,000 per month as salary, which was more than the respondent-husband. Thereafter, during the pendency of the case, she had quitted the job and joined ‘Art of Living’, but did not prove her income from the said source. However, if her income was meagre, there was no reason for not disclosing the same. The withholding of income calls for drawing adverse presumption under Section 114 Illustration (g) of Evidence Act. The petitioner has not been able to prove that the disparity of the income between her and the respondent- husband is so large as to enable this Court to say that the wife is unable to maintain herself as per the status of the husband.

12. However, as per medical certificates produced by the petitioner, she is reported to be suffering from sarcoidosis, which is “a systematic granulomatous disease that predominantly affects the lungs with resulting fibrosis. The said disease is claimed to be a rare disease and with the said disease, the petitioner has to take care of the minor child both for her healthy growth and for her education. Therefore, while finding no merit in this application, but having noticed that it is pleaded that the petitioner is ill and has to take care of the minor daughter, this Court is inclined to clarify that this Court is of the view that the dismissal of this application shall not be construed to be a bar for the petitioner to invoke Section 125 of the Criminal Procedure Code, if so advised.

13. This Court is conscious of the fact that the maintenance under Section 24 of the Hindu Marriage Act, 1956 is only for interim maintenance and, as such, this order shall not preclude the learned Family Court to pass such appropriate orders for maintenance under the relevant provisions of law to which the petitioner and the daughter of the parties are found to be entitled to.

14. It is further clarified that the observation by this Court was solely for the purpose of this order and nothing stated herein shall be construed to be the opinion of this Court on the merit of the main case, which has not been gone into by this Court. Hence, the learned Family Court shall not be influenced by the observations made herein.


15. In view of the discussions above, this revision stands dismissed. The parties are left to bear their own cost.


16. The parties shall appear before the Court of the learned Principal Judge, Family Court, Guwahati, on 17.8.2017 without any further notice for appearance and seek further instructions from the said learned Court.

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